IN THE HIGH COURT OF JHARKHAND AT RANCHI
Second Appeal No. No.123 of 2003

Haider Mian & Anr. .... Appellants

Versus

Gulish Khatoon & Ors. .... Respondent

CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA

For the Appellants : Mr. S. N. Das, Advocate
For the Respondents : Mr. Sharvan Kumar, Advocate
: Mr. S. K. Murthy, Advocate

18/Dated: 3rd July, 2015
I.A. No.2355 of 2005
I.A. No.2479 of 2015

I.A. No.2355 of 2005 has been filed on behalf of the appellanst and I.A. No.2479 of 2015 has been filed on behalf of the respondents with a prayer to expunge the name of Respondent No.11 and to substitute his legal heirs/ representatives.

Learned counsel, for the appellant, submitted that I.A. No.2355 of 2005 has been filed under Order XXII Rule 4 read with Rule 11 of the Code of Civil Procedure with a prayer to expunge the name of respondent No.11, Md. Azim from the appeal, who died on 20.06.2005 and also to substitute his legal heirs/ representative, as mentioned at paragraph 2 of the supporting affidavit. It is further submitted that the substitution petition has been filed within time.

2. Let the legal heirs/ representatives namely, Md. Sirajuddin, Md. Tajuddin, Md. Moinuddin and Shamim Bano be substituted, as respondent Nos.11(a) to 11(d) respectively in place of deceased respondent No.11, and abatement, if any, is set aside.

3. Learned counsel, for the appellants, shall carry out necessary correction in cause tittle of the appeal with red ink.

4. Accordingly, I.A. No. 2355 of 2005 stands allowed. Consequently, I.A. No.2479 of 2015 also stands disposed of.

5. Learned counsel, for the respondent No.11, has submitted that he has filed V*akalatnama* on behalf of the newly substituted legal heirs of deceased respondent No.11, hence, no notice is required to be issued upon them.

I.A. No.2336 of 2006

The I.A. No.2336 of 2006 has been filed on behalf of the appellants, under Order V, Rule 20 Sub-Rule (1A) of the Code of Civil Procedure praying therein to grant permission for taking steps for substituted service of notice upon respondent Nos.1, 12, 13, 15 to 19, 23, 24, 26, 31 and 32.

Learned counsel, for the appellants, submitted that on several times notices were issued upon the respondent Nos.1, 12, 13, 15 to 19, 23, 24, 26, 31 and 32, but same could not be validly served upon them as they are intentionally avoiding service of notice.

Learned counsel for the appellants shall take steps for substituted service of notice by publication in the local Hindi Newspapers preferably in '*Dainik Bhaskar*' or '*Prabhat Khabar*', widely circulated within the district of Giridih.

Office is directed to supply the contents of notice to the counsel for the appellants.

Accordingly, I.A. No.2336 of 2006 stands allowed.

I.A. No.1886 of 2010

The I.A. No.1886 of 2010 has been filed on behalf of the appellants, under Order XXXIX, Rule 1 & 2 of the Code of Civil Procedure praying therein to restrain respondent Nos.02 to 07 from making any construction over the suit property.

Learned counsel, for the respondent Nos.02 to 07, is in attendance.

Learned counsel, for the respondent Nos.02 to 07 submits that he shall seek necessary instruction and direct the respondent Nos.02 to 07 not to make any construction over the suit property till the next date.

S.A. No.123 of 2003

Office is directed to intimate the learned District Judge, Burdwan that even if the notice is received after the expiry of date he shall direct the process server to ensure the service of notice and send report to this Court regarding service of the notice.

Learned counsel, for the appellants, shall take fresh steps for issuance of notice upon respondent Nos.16(c) and 16(d), within a week.

Learned counsel, for the appellants, may utilize the returned memo, if any.

(AMITAV K. GUPTA, J.)

Chandan/-